

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

MAR - 6 2014

LAVERN BERRYHILL,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES OF AMERICA et al.,)
)
Defendants.)

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY ruk DEPUTY

No. CIV-14-91-W

ORDER

On February 10, 2014, United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation in this matter and recommended that the action be dismissed unless plaintiff Lavern Berryhill, proceeding pro se, paid the filing fee in full by a designated date. Berryhill was advised of his right to object, see Doc. 5 at 4, and the matter now comes before the Court on Berryhill's Objection to Magistrate's Report and Recommendation, see Doc. 6, and Motion for Leave to Proceed in Forma Pauperis and supporting documentation. See Doc. 6-1.

Upon de novo review, the Court concurs with Magistrate Judge Erwin's suggested disposition of this matter and, in the absence of allegations in Berryhill's complaint that he "is under imminent danger of serious physical injury," 28 U.S.C. § 1915(g),¹ finds that

¹Section 1915(g) is "the 'three strikes' provision of the in forma pauperis statute, as amended by the Prison Litigation Reform Act of 1995." Jennings v. Natrona County Detention Center Medical Facility, 175 F.3d 775, 778 (10th Cir. 1999). It provides in pertinent part:

In no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated . . . in any facility, brought an action . . . in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Berryhill is prevented from proceeding in forma pauperis in this matter. E.g., Jennings v. Natrona County Detention Center Medical Facility, 175 F.3d 775, 778 (10th Cir. 1999).

Accordingly, the Court


(1) ADOPTS the Report and Recommendation [Doc. 5] issued on February 10, 2014;

(2) DENIES Berryhill's Motion for Leave to Proceed In Forma Pauperis, see Doc. 6-1;

(3) ORDERS Berryhill to pay the filing fee of \$400.00 in full to the Clerk of the Court on or before March 27, 2014; and

(4) ADVISES Berryhill that if the filing fee is not paid in full by the designated date that this matter shall be dismissed without prejudice.

ENTERED this 6th day of March, 2014.


LEE R. WEST
UNITED STATES DISTRICT JUDGE

28 U.S.C. § 1915(g). "This provision requires so-called "frequent filer" prisoners to prepay the entire filing fee before federal courts may consider their civil actions" Jennings, 175 F.3d at 778 (quoting White v. Colorado, 157 F.3d 1226, 1232 (10th Cir. 1998)).